

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
3 ERIE DIVISION

4 - - -

5 United States of America :

6 -VS- : Criminal NO.: 05-CR-00012

7 SHAUN LANAIL BENNAFIELD :

8 - - -

9 Sentencing of **SHAUN LANAIL BENNAFIELD**, taken before  
10 Judge Maurice Cohill, on Monday, March 13, 2006, at the  
11 United States Federal Courthouse, Courtroom "B", 17 South  
12 Park Row, Erie, Pennsylvania, 16501, commencing at 10:05 a.m.  
13 and concluding at 10:30 a.m.

14 - - -

15 APPEARANCES:

16 For the United States:  
17 Marshall Piccinini, Esquire

18 For the Defendant, Shaun Bennafield:  
19 Thomas Patton, Esquire

20 REPORTED BY: DENICE A. GRILL, RMR  
21 FERGUSON & HOLDNACK REPORTING, INC.  
22  
23  
24  
25

1 P R O C E E D I N G S

2  
3 THE COURT: Good morning. Be seated. This is  
4 the time set for the sentencing of Shaun Lanail  
5 Bennafield. Mr. Patton, have you and your client  
6 received and reviewed the presentence report?

7 MR. PATTON: We have, your Honor.

8 THE COURT: And you've gone over that with Mr.  
9 Bennafield, I take it?

10 MR. PATTON: Yes, sir.

11 THE COURT: I've read your position statement  
12 with respect to the sentencing, and also the response  
13 of the Government to that statement. There were no  
14 objections filed by either party in the case, so it  
15 won't be necessary to address any sorts of  
16 objections.

17 We're operating with having to look at both  
18 Sentencing Guidelines and the instructions that came  
19 from the Supreme Court of United States in the case  
20 known as Booker, in which they told us we have to  
21 look at the guidelines. But they are advisory only,  
22 they're not mandatory on the Courts.

23 After having done that, in the absence of any  
24 objections, with respect to the findings of the  
25 probation officer and with respect to the guidelines,

1 we find that the appropriate offense level here is  
2 29, and the criminal history category is Roman  
3 Numeral V. Thus, the applicable guideline range is  
4 140 to 175 months' of imprisonment; Supervised  
5 Release of five years; a fine in the range of \$15,000  
6 to \$4,000,000; and a special assessment of \$100.

7 At this time, Mr. Patton, do you wish to say  
8 anything or introduce any initial testimony on behalf  
9 of your client.

10 MR. PATTON: Your Honor, we do not have any  
11 testimony to present, your Honor, but I would like to  
12 speak a little bit with the Court about the position  
13 with respect to sentencing that's been filed, and the  
14 Government's response to that.

15 As your Honor knows from having read our  
16 position, our argument is that while Mr. Bennafield  
17 certainly deserves a significant sentence in this  
18 case due to the seriousness of the offense and the  
19 existence of his criminal history, that when you look  
20 at the factors set forth in 18 United States Code  
21 Section 3553, that a sentence that is sufficient but  
22 not greater than necessary to punish Mr. Bennafield  
23 is the ten year mandatory minimum that applies to  
24 this case.

25 I wanted to specifically address one of the

1 arguments raised in the Government's response to our  
2 position, and that being that it would be  
3 inappropriate for your Honor to give Mr. Bennafield a  
4 sentence of ten years because that ten year mandatory  
5 minimum would apply to a first time offender who had  
6 no criminal history who was before this Court. And  
7 therefore, the Government argues that it makes no  
8 sense to give Mr. Bennafield the same sentence that  
9 someone who is a first time offender who was  
10 convicted of possession with intent to distribute 50  
11 or more grams of crack cocaine. The fact of that  
12 argument is it's incorrect.

13 If a person was standing before you as a first  
14 time offender, and under the same facts as Mr.  
15 Bennafield's case, that person would get the benefit  
16 of what's commonly referred to as a safety valve,  
17 which is designed to allow first time offenders not  
18 to have to suffer the consequences of the severe  
19 mandatory minimum penalty. And not only that, under  
20 the Sentencing Guidelines, specifically section  
21 21.1(b)(7), if a defendant qualifies for the safety  
22 valve provision, they also receive a two level  
23 reduction in their offense level under the  
24 guidelines.

25 So that a first time offender who would be

1 before your Honor basically in the same situation as  
2 Mr. Bennafield as far as amounts of crack cocaine,  
3 but different in the sense that he did not have any  
4 criminal history, that person would actually be  
5 looking at a sentence range of 70 to 87 months,  
6 because they would have had an offense level of 27  
7 rather than 29 as Mr. Bennafield has. And an offense  
8 level of 27 would give a sentencing range of 70 to 87  
9 months.

10 And so if the Court were to give Mr.  
11 Bennafield a sentence of 120 months, which is the  
12 mandatory minimum, it would not somehow be placing  
13 him in the same situation as a first time offender  
14 who was before your Honor.

15 Now, Judge, I can't dispute the fact that Mr.  
16 Bennafield has several prior adult convictions. But  
17 the flip side of that is nobody can dispute that the  
18 longest period of incarceration the man ever served  
19 is nine months. And when you are trying to determine  
20 what is an appropriate punishment for this person,  
21 given this person's history, I believe it completely  
22 is appropriate for you to look at, okay, how much  
23 time has this person served in prison before, what  
24 kind of sentences has he been subjected to before  
25 that were not successful in convincing him not to

1 continue to commit crimes.

2 I think the second circuit explained the point  
3 in the Mishoe case, M-I-S-H-O-E, that I cite in our  
4 position, and you know it better than I can  
5 articulate it. And I think when you look at those  
6 factors, you can decide that a ten year sentence is  
7 appropriate in this case. In asking you to look at  
8 the length of prior sentences that Mr. Bennafield has  
9 served, it does not equate with asking the Court to  
10 ignore every other fact that's involved in the case.  
11 Section 3553 tells you that you need to impose a  
12 sentence that reflects the seriousness of the offense  
13 to promote respect for the law, and to provide just  
14 punishment for the offense.

15 Your Honor, a ten year imprisonment is an  
16 exceedingly long sentence. And to the extent that  
17 anyone outside this courtroom would actually hear  
18 about this sentencing, no one could legitimately look  
19 at the facts of the case and say, man, Mr.  
20 Bennafield, you know, he just got off with another  
21 slap on the wrist, ten years in prison, he got off  
22 easy.

23 I mean to the extent that anybody outside this  
24 courtroom is going to hear about this case, they're  
25 going to hear that the young man was arrested with

1 more than 50 grams of crack cocaine, and he's going  
2 to prison for ten years. Now I would submit that is  
3 going to promote respect for the law, and show that  
4 this is a very serious offense that the federal  
5 criminal justice system takes seriously. Now,  
6 also with respect to the affording adequate  
7 deterrence to criminal conduct, to the extent there  
8 is such a thing as general deterrence, a ten year  
9 sentence -- If a ten year sentence of imprisonment  
10 for coming here and selling crack cocaine isn't  
11 enough to deter someone other than Mr. Bennafield who  
12 would somehow hear about this case, you know, a  
13 sentence of 140 months isn't going to tip the balance  
14 or the sentence of 175 months and going to make that  
15 different to protect the public from further crimes  
16 of the defendant, but Mr. Bennafield instead of the  
17 defendant.

18 Certainly, incapacitation is going to prevent  
19 Mr. Bennafield from committing offenses against  
20 society. And that's going to be true whether there's  
21 a 120 month sentence or a 140 month sentence or 175  
22 month sentence.

23 Finally, to provide the defendant with needed  
24 educational or vocational training, medical care or  
25 other correctional treatment in the most effective

1 manner, Mr. Bennafield I think certainly could  
2 benefit from a program designed to address  
3 controlled substance problems that he, himself, has.  
4 And so that is available in the Bureau of Prisons.  
5 Although it doesn't take ten years or 12 years to  
6 achieve or complete that program. And short of that,  
7 there really aren't a really large amount of programs  
8 unfortunately that the Bureau of Prisons does offer  
9 to someone in Mr. Bennafield's position.

10 So while I can appreciate the Government's  
11 position that Mr. Bennafield has numerous prior  
12 convictions, and I appreciate the Government's  
13 position that maybe he's gotten breaks in the past,  
14 and now is the time -- no more breaks, he has to  
15 receive a significant sentence, well ten years is a  
16 significant sentence.

17 And I think this case illustrates that  
18 sometimes be it State Court Judges and maybe even  
19 sometimes Federal Court Judges, oftentimes don't do  
20 young men much of a service by repeatedly imposing  
21 sentences of probation or very low terms of  
22 incarceration or probation, and you violate, and you  
23 get more probation. Because human beings, they learn  
24 from experience. We see it all the time. You see it  
25 in high profile college athletes who have no



1 appreciation for their own conduct, never expect to  
2 be held accountable for what they do, because their  
3 whole life the rules have been waived for them  
4 because they're good at a sport.

5 So what do they learn? Well, the rules don't  
6 apply to me, so I can continue to act in this manner  
7 and there's never going to be any consequences.  
8 Well, consistently giving young men low sentences and  
9 break after break, while may make them happy in the  
10 short term, is a failing of our criminal justice  
11 system in the sense that there needs to be graduated  
12 penalties. Because otherwise, you end up with  
13 someone like Mr. Bennafield, who is now going from  
14 probation, a couple days in jail, nine months, to 12  
15 years. And so I just ask you to consider that when  
16 you're deciding, is it going to be 120 months, 140 or  
17 170 months.

18 Is it -- Look, no matter which one of those  
19 sentences you give to Mr. Bennafield, it's going to  
20 be a huge increase over any other punishment the man  
21 has ever received.

22 So, it's going to be categorically different  
23 than any punishment he's ever received, that large of  
24 an increase in the sentences he has received is going  
25 to be. I would submit, suffice to say, you know,

1           there are no more breaks. I don't think I can say  
2           getting a sentence of ten years really qualifies as  
3           getting a break, and that, you know, if you come back  
4           again, now you've done ten years, so the next  
5           sentence is going to be significantly longer than ten  
6           years. And if you do that again, it will be  
7           significantly longer than the 15 to 20 years he might  
8           get the next time.

9           So I ask you to consider all that and not  
10          close your eyes to Mr. Bennafield's criminal history,  
11          but consider it, and ask you that you give a sentence  
12          of 120 months.

13          THE COURT: Thanks, Mr. Patton. Mr.  
14          Bennafield, anything you wanted to say on your  
15          behalf?

16          THE DEFENDANT: Yes, your Honor. I'd like to  
17          just say that I understand the crimes I committed,  
18          and I apologize to the Court. I'm willing to accept  
19          whatever sentence that you impose. Thank you.

20          THE COURT: Thank you. Mr. Piccinini.

21          MR. PICCININI: Thank you, your Honor. Your  
22          Honor, at the outset counsel -- Or the defendant's  
23          position in this case, and in all three cases that  
24          you're going to have before you for sentencing here  
25          today, starts out with a claim that the factor that

1 separates in this case, Mr. Bennafield, and you'll  
2 hear it again this afternoon, and this afternoon the  
3 fact that it separates these men, and that separates  
4 them from an ordinary defendant, that their criminal  
5 history category is such as it is, and that the most  
6 that they served previously in prison was one year.

7 That's the case with Mr. Bennafield and that's  
8 the case with the two other sentencings you have here  
9 today. And the reason why I don't typically bring in  
10 what happens in other cases, but I think it's  
11 significant here because the claim for what is  
12 leniency, and compared to a sentencing guideline that  
13 is reasonable and a minimum sentence of 120 months,  
14 there is leniency to come down from the guideline  
15 sentence and sentence Mr. Bennafield to 10 years.

16 And the reason for the leniency is he's so  
17 different from any other drug dealer that comes into  
18 this courtroom. But is he really so different is  
19 what I'd like the Court to reflect on. Isn't he the  
20 same as any other defendant that we have had graduate  
21 into Federal Court? That he has a history. He's  
22 been a drug dealer. He moved from smaller quantities  
23 to larger quantities. He moved from a bigger city  
24 into a smaller city here in Erie where he could, in  
25 his mind, more easily get away with his drug trade.

1 And it's those type of guys who have graduated  
2 through the system, who need to be treated in such a  
3 fashion in the federal system. So, not at the  
4 mandatory minimum, but at a level that takes into  
5 consideration everything.

6 Counsel is correct, and I actually overlooked  
7 the safety valve provisions. But what's interesting  
8 about that argument is that with regard to this  
9 defendant you can only qualify for the safety valve  
10 consideration is if you have no more than one  
11 criminal history. This defendant would never have  
12 been eligible or a defendant like him. He would  
13 never be eligible for a safety valve.

14 If you take his two 18 year old marijuana  
15 small possessions, there's two points right there.  
16 So this defendant and other defendants like him with  
17 similar backgrounds, even if it's not comparable to  
18 someone with a clean slate but with similar  
19 backgrounds, even the most minor offenses in their  
20 criminal history would keep them from being afforded  
21 the safety valve provisions.

22 So you look at the mandatory minimum. And if  
23 you impose a mandatory minimum, my point to the Court  
24 is, have you really considered everything else about  
25 this man's background that 3553 requires you to do?

1           Because taking out the people eligible for a safety  
2           valve mandatory minimum, it's a minimum, your Honor.  
3           And now look at everything else we know about the  
4           defendant, the minimum would apply even if he had  
5           just those two marijuana convictions.

6                   What else should we look at in determining  
7           where to sentence him? We could start with his three  
8           previous felony drug traffic convictions. We can  
9           just start with those. And just because he was lucky  
10          enough to be in the State of Ohio, your Honor, if he  
11          committed those drug traffic offenses in  
12          Pennsylvania, each one of them would have qualified  
13          for career offender status and he'd be looking at 260  
14          to 327 months under the sentencing guidelines. I  
15          know you're not bound by the Sentencing Guidelines,  
16          but I know this Court will consider the rationale,  
17          the reasoning behind the Sentencing Commission  
18          providing increased sentences based upon all these  
19          factors. And it just makes good sense, your Honor.

20                   I don't dispute counsel's claim ten years is a  
21          lot of time in prison, but there's a difference  
22          between Shaun Bennafield the drug dealer in Cleveland  
23          who moved over to Erie to continue the same drug  
24          activity and another defendant who is not safety  
25          valve eligible, and who happens to be here on a crack

1 cocaine charge. He turned himself into a crack  
2 cocaine dealer. Things didn't work out so well in  
3 Cleveland so you move to the little town of Erie.  
4 And you think you're going to get away with it. And  
5 luckily the Eagle task folks zeroed in on these guys.  
6 And when the word gets out to other dealers who move  
7 to Erie, we have to let them know they're going to  
8 get a more severe sentence than the mandatory  
9 minimum.

10 Whether it's two years more than the mandatory  
11 minimum, or five years more than the mandatory  
12 minimum, in Erie, Pennsylvania when you move your  
13 drug trade from Cleveland to Erie, you're going to  
14 get sentenced more harshly. And I believe if you  
15 consider all those factors, under 3553, unfortunately  
16 for Mr. Bennafield, this offense is serious. His  
17 quantity of cocaine significantly increased from  
18 those offenses for which he only received nine months  
19 or a year in prison. And if you just do the math and  
20 say, okay, for this quantity of drugs you got a year.  
21 Well, guess what? Today in Federal Court for this  
22 quantity of drugs. You're going to get 140 to 175  
23 months just based on the seriousness of the offense.

24 Drug dealers on the street, Judge, they come  
25 in, and when they're ready to take their hit, they

1 say I can do ten, because they know it's a mandatory  
2 minimum. I can do ten. And I'm wondering here today  
3 how many times in all of his prior drug trafficking  
4 convictions he stood up in front of a Judge and  
5 unfortunately gave the same speech he gave today.  
6 I'm sorry for the offense I've committed. I realize  
7 the wrong. You know, how many times are we going to  
8 hear that? Because, you know if they get hit and  
9 they get hit hard, and they don't come back to deal  
10 more drugs.

11 And Attorney Patton makes very good statements  
12 with the way the system treats these young men. But  
13 that doesn't cause you to now, once again, provide  
14 the same low or lenient sentence that would otherwise  
15 be afforded. And I request you sentence within the  
16 guideline range, because I think it's wise. And not  
17 only is it a guideline sentence, but it properly  
18 takes into consideration the factors of 3553. Thank  
19 you.

20 THE COURT: Thank you, Mr. Piccinini. Well,  
21 so often in sentencing defendants we concentrate so  
22 much on the life experience of the defendant himself,  
23 which is proper. But we also have to consider the  
24 impact of the defendants' actions on the community.  
25 And nobody will argue with the fact that the drug

dealings in this day and age is a terrible, terrible problem for society and law enforcement. And we know about mothers being addicted to drugs, who then have a child when the child is born, who is addicted to whatever the mother was taking. This is terrible, terrible stuff. And this defendant had a lot of cocaine with him.

We've also studied 18 United States Code, Section 3553. Mr. Patton mentioned it and Mr. Piccinini described it in his position, stating that we must look at the nature and circumstances of the offense, which is serious, and the history and characteristics of the defendant. And we have 15 arrests, 11 convictions. Ten of them for drugs. The sentence should reflect the seriousness of the offense to promote respect for the law and provide just punishment for the offense, and offer adequate deterrence to the criminal conduct, and protect the public from further crimes of the defendant. And admittedly, the guideline range here is very tough.

I'm going to stay within the guideline range. I'm not going to the top of the range as suggested by the Government, but I'm going to come in within the guideline range in my sentence.

Mr. Piccinini, is there any reason that



1 sentence should not be imposed at this time?

2 MR. PICCININI: No, your Honor.

3 THE COURT: Mr. Patton?

4 MR. PATTON: No, sir.

5 THE COURT: Mr. Bennafield?

6 THE DEFENDANT: No, sir.

7 THE COURT: After consulting with the  
8 guidelines, it's the judgment of the Court that the  
9 defendant, Shaun Lanail Bennafield, is hereby  
10 committed to the custody of the Bureau of Prisons to  
11 be imprisoned for a term of 144 months.

12 Upon release from imprisonment, the defendant  
13 shall be placed on supervised release for a term of  
14 five years. Within 72 hours of release from the  
15 custody of the Bureau of Prisons, the defendant shall  
16 report in person to the Probation Office in the  
17 district to which the defendant is released.

18 While on supervised release, the defendant  
19 shall not commit another federal, state, or local  
20 crime; shall comply with the standard conditions of  
21 supervision that have been recommended by the  
22 sentencing commission, and adopted by this Court; and  
23 shall also comply with the following additional  
24 conditions:

25 The defendant shall not illegally possess a

1 controlled substance.

2 The defendant shall not possess a firearm or  
3 destructive device.

4 The defendant shall participate in a program  
5 of testing, and if necessary, treatment for substance  
6 abuse as directed by the probation officer, until  
7 such time as the defendant is released from the  
8 program by the probation officer. Further, the  
9 defendant shall be required to contribute to the  
10 costs of services for any such treatment in an amount  
11 determined by the probation officer, but not to  
12 exceed the actual cost. The defendant shall submit  
13 to at least one drug urinalysis within 15 days of  
14 being placed on supervision, and at least two  
15 periodic tests thereafter.

16 The defendant shall cooperate in the  
17 collection of DNA as directed by the probation  
18 officer.

19 The Court finds that the defendant does not  
20 have the ability to pay a fine. The Court will waive  
21 the fine in this case due to the defendant's  
22 inability to pay.

23 It is further ordered that the defendant shall  
24 pay to the United States a special assessment of  
25 \$100, which shall be paid to the U.S. District Court

1 Clerk forthwith.

2 We believe that a sentence of 145 months  
3 followed by five years of supervised release  
4 adequately addresses the nature and circumstances of  
5 this offense, as well as the history and background  
6 of the defendant.

7 In imposing this sentence, we have considered  
8 the kinds of sentences available, and the sentencing  
9 range set forth in the guidelines, including any  
10 relevant policy statements issued by the Sentencing  
11 Commission.

12 This sentence takes into account the need to  
13 avoid unwarranted disparities in sentencing among  
14 defendants with similar records who have been found  
15 guilty of similar conduct.

16 At the same time, this sentence reflects the  
17 seriousness of this offense and provides just  
18 punishment for it; and also promotes respect for the  
19 law and affords adequate deterrence to criminal  
20 conduct while protecting the public from further  
21 crimes by this defendant.

22 Mr. Bennafield, you have a right to appeal; an  
23 appeal must be filed within ten days; you are  
24 entitled to a lawyer at every stage of the  
25 proceedings, and if you cannot afford an attorney,

1           one will be provided to you without charge.

2           I don't believe there are any counts to be  
3           dismissed here.

4           MR. PICCININI: There are none.

5           MR. PATTON: Your Honor, if I could, two  
6           issues. First, we would object to the condition of  
7           supervised release that requires Mr. Bennafield to  
8           assist in providing a sample of his DNA. And --

9           THE COURT: It's denied.

10          MR. PATTON: The other issue I would ask is if  
11          you would recommend to the Bureau of Prisons that Mr.  
12          Bennafield be housed close to Cleveland so he can be  
13          able to be near his family.

14          THE COURT: I would be willing to do that.

15          MR. PATTON: Thank you.

16          (At which time, 10:30 a.m. The proceedings  
17          were concluded.)

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Denice A. Grill, RMR, a Court Reporter and  
Notary Public in and for the Commonwealth of Pennsylvania,  
do hereby certify that the foregoing is a true and accurate  
transcript of my stenographic notes in the above-captioned  
matter.

\_\_\_\_\_  
Denice A. Grill, RMR

Registered Merit Reporter

DATED: \_\_\_\_\_